IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 266 of 2003

WITH

CIVIL APPLICATION No 5646 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MADHAVLAL ISHWARDAS

Versus

PATEL BUDHALAL MOHANLAL

Appearance:

1. Appeal from Order No. 266 of 2003

MR MAHESH BHAVSAR for Appellant.

MR MUKUNDRAY JAYSWAL for Appellant.

MR JB PARDIWALA for Respondent No. 1

MR PK JANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 15/06/2004

CAV JUDGEMENT

This Appeal From Order is filed by the present appellant - original plaintiff against the order passed by the learned 4th Joint Civil Judge (S.D.), Mehsana below an application Exh. 5 in Special Civil Suit No. 203 of 2002 whereby the injunction application was rejected.

2. The brief facts giving rise to the present Appeal From Order are that an Agreement of sale was executed between the appellant and the respondent No.1 in respect of the suit property on 05.04.1991. The suit property originally belonged to the father of the respondent No.1, namely, Shri Mohandas Narsinhdas Patel who was the sole owner of the suit property and the respondent No.1 was the only legal heir of the said Shri Mohandas Narsinhdas Patel. After the death of the said Shri Mohandas Narsinhdas Patel, the respondent No.1 has become the sole owner of the properties of the deceased and all entries in the revenue records have been made to this effect.

3. As per the Agreement of sale, the suit property was agreed to be sold at Rs. 1,20,111/- and at the time of the execution of the said Agreement of sale, an amount of Rs. 5,001/- was paid by the appellant to the respondent No.1. One of the terms of the said agreement of sale was that the respondent No.1 was to convert the land in question from new tenure into old tenure land after following the due procedure of law and within 15 days from the date of the said conversion, the respondent No.1 had to execute the final Sale Deed in favour of the appellant. It is the case of the appellant that the appellant was always ready and willing to perform his part of the contract. However, the respondent No.1 has not taken any care to perform his part of the contract for the purpose of seeking permission from the Collector to convert the suit land into old tenure land.

4. It is also averred in the appeal memo that the respondent No.1 has submitted an application to the Collector to convert the land into old tenure land and the permission was granted by the Collector vide his order dated 05.07.2002. The Collector after following due procedure of law and after fixing the premium price at Rs. 6,55,263/- which was paid by the respondent No.2, the land was converted into old tenure land. On receipt of such permission from the Collector, the respondent No.1 has executed the sale deed in favour of the respondent No.2 on 06.07.2002 and the property was sold at Rs. 4,40,200/-.

5. Since the respondent No.1 has committed breach of the agreement of sale, the appellant has filed Special Civil Suit No. 203 of 2002 in the Court of Civil Judge (S.D.), Mehsana for specific performance of the contract dated 05.04.1991 and also for cancellation of document executed by the respondent No.1 in favour of the respondent No.2. The appellant has also moved an application Exh.5 seeking temporary injunction which was rejected by the learned Trial Judge vide his order dated 21.04.2003 which is under challenge in the present Appeal From Order.

6. Heard Mr. Mahesh Bhavsar, learned advocate appearing for the appellant, Mr. J.B. Pardiwala, learned advocate appearing for the respondent No.1 and Mr. P.K. Jani, learned advocate appearing for the respondent No.2. On 19.03.2004, this Court has issued notice to the respondent No.1 as Mr. P.K. Jani, learned advocate appeared on caveat on behalf of the respondent No.2. Thereafter, on 15.04.2004, Mr. P.K. Jani has placed on record the order dated 15.07.2000 passed by the Prant Officer, Mehsana whereby the permission for conversion of the suit land from new tenure into old tenure applied for by the respondent No.1 was rejected. Mr. Bhavsar, learned advocate appearing for the appellant has, therefore, sought time to have instructions from his client so far as the said order was concerned. However, no further details could be furnished and the matter was heard at length.

7. Mr. Mahesh Bhavsar, learned advocate appearing for the appellant has submitted that the learned Trial Judge has committed a grave error in law as well as on facts by not granting the interim relief as prayed for by the appellant in his injunction application. The respondents were required to be restrained from effecting any change in the disputed property, as otherwise, it would result into multiplicity of proceedings and the whole suit filed by the present appellant before the Trial Court would become infructuous. There was no dispute with regard to the execution of the agreement of sale on 06.04.1991. Since there was a specific condition in the agreement of sale that after converting the land into old tenure land, the respondent No.1 would execute the sale deed in favour of the present appellant and hence, the limitation to file the suit commenced after the conversion of the land into old tenure land and, therefore, the suit filed by the present appellant before the Trial Court was well within the period of limitation. Since the appellant came to know about the fact that the respondent No.1 has commenced the proceeding to sell the

suit property to the third party, the appellant has filed Civil suit before the Court of learned Civil Judge (J.D.), Vadnagar on 03.07.2000 for declaration and injunction. However, the injunction was not granted by the learned Trial Judge and in the meanwhile, the permission was granted by the Collector and the sale deed was executed in favour of the respondent No.2. The appellant therefore, has immediately filed the Special Civil Suit before the Court of learned Civil Judge (S.D.), Mehsana. The finding recorded by the learned Trial Judge with regard to the applicability of the principle of acquiescence is absolutely uncalled for and unsustainable.

8. Mr. Bhavsar has relied on the decision of this Court passed in First Appeal No. 823 of 1986 decided on 12.08.1986 wherein the question regarding limitation as well as the fact of non-registration of the agreement of sale were also involved and the Court has taken the view that if there is a specific term in the contract that after the necessary permission with regard to the issue of minors was procured, the final sale deed was to be executed and, therefore, till that was done, there was no question of starting the period of limitation against the plaintiff. The Court has further observed that the vendor could not take benefit out of his own default of not handing over the possession of the suit property within six months of the execution. The Court has also observed that in view of the Provisions contained in Proviso to Section 49 of the Registration Act, the suit would not fail on the ground of compulsory registration as the Proviso in terms states that an unregistered document effecting immoveable property and required to be registered under the Registration Act or under the Transfer of Property Act, can be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1977. Since the appellant has filed the suit for specific performance, the said agreement can certainly be pressed into service. He has, therefore, submitted that the learned Trial Judge has wrongly rejected the injunction application. This Court should, therefore, stay the said order and grant the interim relief as prayed for.

9. Mr. J.B. Pardiwala, learned advocate appearing for the respondent No.1 has submitted that the agreement of sale was entered into on 05.04.1991 and for 11 years, the appellant has not done anything and only when the permission was granted by the Collector and the sale deed was executed, the appellant has filed the Special Civil Suit before the Trial Court. The only intention of the

appellant was to extract money from the respondent No.1 and the appellant was not interested at all in purchasing the said property. Earlier, the permission was sought for by the respondent No.1. However, the same was rejected and thereafter only when the Collector has granted permission to sell the land in favour of the respondent No.2 by converting the suit land from new tenure into old tenure, the Sale Deed was executed by the respondent No.1 in favour of the respondent No.2 and hence, the appellant has no right whatsoever to ask for any relief against the respondent No.1.

10. Mr. P.K. Jani, learned advocate appearing for the respondent No.2 has submitted that the plaintiff's suit is barred by limitation as Article 54 of the Limitation Act prescribes the time limit of three years for filing the suit for specific performance. The Agreement of sale was entered into on 05.04.1991 and the suit was filed in July, 2002. The suit is, therefore, hopelessly barred by limitation. The alleged agreement of sale between the appellant and the respondent No.1 cannot be considered to be a valid agreement as the respondent No.1 was not the owner of the suit property. At the relevant point of time, the suit property was standing in the name of the father of the respondent No.1 and he has not signed the said agreement. The father has not subsequently ratified the said agreement. The respondent No.2 has become the lawful owner of the property. He has paid the premium amount of Rs. 6,55,263/- as per the order passed by the Collector and also paid the full consideration of Rs. 4,40,200/-. No interim relief can be granted in a suit which was filed after a lapse of so many years. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of K.S. VIDYANADAM AND OTHERS V/S. VAIRAVAN, AIR 1997 S.C. 1751 wherein it is held that "The rigour of the rule that time is not of the essence of the contract in the case of immovable properties, was evolved by the Courts in times when prices and values were stable and inflation was unknown. It requires to be relaxed, particularly in the case of urban immovable properties. While exercising its discretion, the Courts should also bear in mind that when the parties prescribe certain time limits for taking steps by one or the other party, it must have some significance and that the said time limits cannot be ignored altogether on the ground that time has not been made the essence of the contract relating to immovable properties."

11. Mr. Jani has further relied on the decision of the Hon'ble Supreme Court in the case of MANJUNATH

ANANDAPPA URF SHIVAPPA V/S. TAMMANASA AND OTHERS, 2003 (10) S.C.C. 390 wherein the plaintiff filed the suit almost after six years from the date of entering into agreement of sale. He did not bring any material on record to show that he had ever asked the defendant, the owner of the property, to execute a deed of sale. He filed the suit only after he came to know that the suit land had already been sold by him in favour of the appellant. Further more, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the Court within a reasonable time. The Court held that having regard to this conduct, the plaintiff was not entitled to the discretionary relief."

12. Mr. Jani has further relied on the decision of this Court in the case of VEETRAG HOLDINGS PVT. LTD. V/S. GUJARAT STATE TEXTILE CORPORATION LIMITED, 1996 (1) G.L.H. 179 wherein it is held that even so, in any case, inasmuch as the contract was terminated on 6th December, 1993, it was expected of the appellants to move for specific performance at the earliest, if they were serious about the same. The appellants certainly can not be non-suited on the ground of limitation inasmuch as their suit is within time. However, when it comes to grant of equitable relief when the suit is filed after such a lapse of time, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party concerned in this behalf. He has, therefore, submitted that the Trial Court has rightly refused the injunction and this Court while exercising its appellate jurisdiction under O.43, R.1 should not interfere in the order passed by the Trial Court.

13. After having heard learned advocates appearing for the respective parties and after having gone through the documents produced before the Court and the impugned order passed by the learned Trial Judge, the court is of the view that the order passed by the Trial Court does not call for any interference by this Court. The appellant has filed the suit after more than 11 years and that too, for a specific performance of the contract based on an agreement which was executed on 05.04.1991. During this period, no action has been taken by the appellant nor any notice except the one which was issued to the respondent No.1 on 29.05.2000 for execution of the sale deed. The said notice was duly replied to by the respondent No.1 on 19.06.2000. The appellant has not shown any anxiety as to what steps the respondent No.1 has taken for the purpose of seeking permission for

conversion of the land from new tenure into old tenure. Even otherwise, before filing the suit for specific performance, the appellant has approached the learned Civil Judge (J.D.), Vadnagar by way of filing a suit for declaration and injunction and he has not succeeded in getting any order of injunction and thereafter, he has filed the present suit before the learned Civil Judge (S.D.), Mehsana. Even in this suit also, the appellant has not mentioned the fact that the interim relief was refused in a suit filed for declaration and permanent injunction before the learned Civil Judge (J.D.), Vadnagar. The party who comes before the Court must come with clean hands and must disclose all relevant facts before the Court. If facts are not properly disclosed and by concealing these facts, if any favourable order is sought to be obtained, the Court is very reluctant in granting any interim relief to such party. Here in the present case, at the time of execution of agreement of sale, only an amount of Rs. 5,001/- was paid by the appellant to the respondent No.1 and the property was agreed to be sold at Rs. 1,20,111/-. Over the years, the value of the property must have been increased. The escalation in the price of the property should invariably be taken into consideration while granting relief in the suit for specific performance of the Contract. Here in this case, the Collector has granted the permission after charging the premium of Rs. 6,55,263/- and the property was sold by the respondent No.1 to the respondent No.2 at Rs. 4,40,200/-. In all, Rs. 10, 95,463/- were said to have been paid by the respondent No.2 and the final sale deed was executed and the property was already vested in the respondent No.2. Any relief, if granted by the Court, would deprive the respondent No.2 from enjoying the possession of the suit property.

14. Having regard to the facts and circumstances of the case and having regard to the law laid down by this Court and by the Hon'ble Supreme Court on the question of granting interim relief with special reference to suit for specific performance of contract filed after long lapse of time, this Court is of the view that the Trial Court was justified in rejecting the said relief and this Court, therefore, does not see any justification in interfering with the said order of the Trial Court. Since there is no substance or merits in the matter, this Appeal From Order is accordingly dismissed.

15. No order in C.A. No. 5646 of 2003.

Sd/-

[K.A. PUJ, J.]

#Savariya#
*****